

## APPEAL NO. 010624

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 8, 2001, a contested case hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters; that the respondent (carrier) is relieved of liability for SIBs for the second quarter for the period of October 14, 2000, through October 30, 2000, because of the claimant's late filing of his Application for SIBs (TWCC-52) for the second quarter; and that the carrier is relieved of liability for SIBs for the third quarter for the period of January 13, 2001, through January 28, 2001, because of the claimant's late filing of the TWCC-52 for the third quarter. The claimant appealed and the carrier responded.

### DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the first, second, and third quarters. Eligibility criteria for SIBs are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater, and who has not commuted impairment income benefits (IIBs), is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with his ability to work.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity; has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work; and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides, in part, that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that he has an IR of 15% or greater; that he did not commute IIBs; and that during the relevant qualifying periods his unemployment was a direct result of his impairment from his compensable injury. The qualifying period for the first quarter began on April 2, 2000, and the qualifying period for the third quarter ended on December 30, 2000. The SIBs criterion in dispute is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the relevant qualifying periods. Section 408.142(a)(4); Rule 130.102(b)(2).

The claimant testified that he had no ability to work during the relevant qualifying periods. He had cervical surgery for his compensable injury in January 1998 and Dr. Z, the treating doctor, reported in August 2000 and October 2000 that the claimant is unable to work and needs further medical care. A report of a functional capacity evaluation done in September 2000 concluded that the claimant is functioning at a sedentary physical demand level. Dr. P examined the claimant in February 2000 and reported that the claimant may work eight hours a day with specified restrictions. Dr. PE examined the claimant in February 2000 and reported that the claimant can return to work in a light-duty position with specified restrictions. The claimant documented no employment contacts in the qualifying period for the first quarter, six employment contacts in the qualifying period for the second quarter, and six employment contacts in the qualifying period for the third quarter.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer found that the claimant had some ability to work during the relevant qualifying periods and that the claimant did not make a good faith effort to find employment commensurate with his ability to work during the relevant qualifying periods. The hearing officer's decision that the claimant is not entitled to SIBs for the first, second, and third quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in deciding that the carrier is relieved of liability for SIBs for the second quarter for the period of October 14, 2000, through October 30, 2000, because of the claimant's late filing of the TWCC-52, and that the carrier is relieved of liability for SIBs for the third quarter for the period of January 13, 2001, through January 28, 2001, because of the claimant's late filing of the TWCC-52. The second quarter began on October 14, 2000. The parties stipulated that the carrier received the claimant's TWCC-52 for the second quarter on October 31, 2000. The third quarter began on January 13, 2001. The parties stipulated that the carrier received the claimant's TWCC-52 for the third quarter on January 29, 2001. There is no assertion nor evidence of any of the exceptions to timely filing of the TWCC-52 listed in Rule 130.105(a).

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Michael B. McShane  
Appeals Judge